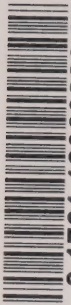


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**REPORT OF THE OMBUDSMAN'S OPINION,
REASONS THEREFOR, AND
RECOMMENDATIONS
FOLLOWING HIS INVESTIGATION INTO
THE COMPLAINT OF FARM Q LIMITED**

FEBRUARY, 1989



The Ombudsman | Ontario

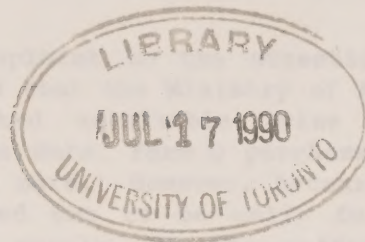
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February 2, 1989

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario



Dear Mr. Speaker:

On this occasion I wish to present a Special Report containing the results of my investigation into the complaint of Farm Q Limited. This report is submitted pursuant to section 22(4) of the Ombudsman Act.

As you will see, the Ministry of Agriculture and Food has declined to implement my recommendation in this case.

As you are aware, such cases are usually reported at the same time each year in my Annual Report. However, when in my opinion special circumstances or urgency exist, I do not wait for the issuing of my Annual Report; I submit a report, such as this, to speed-up the process and hopefully obtain a resolution of the complaints, through the Standing Committee.

The Standing Committee on the Ombudsman is prepared to consider cases reported in this manner on a priority basis.


In my opinion, such expeditious consideration of complaints serves the interests of both the complainants and the governmental agencies involved.

Yours sincerely,

Daniel G. Hill

Daniel G. Hill

Attachment



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REPORT OF THE OMBUDSMAN'S OPINION,

REASONS THEREFOR AND RECOMMENDATIONS

FOLLOWING HIS INVESTIGATION INTO THE COMPLAINT OF

FARM Q LIMITED

Farm Q Limited brought its complaint to the attention of this Office on May 2, 1985. Farm Q complained that the Ministry of Agriculture and Food (MAF) unreasonably disseminated unreliable Swine Record of Performance (ROP) data. Relying on these data, Farm Q purchased breeding stock for its Unit No. 6 from an Ontario herd. However, because the data were incorrect, much of the stock turned out to be unfit for breeding purposes. Farm Q contends that, as a result, it has suffered severe financial losses.

By letter dated May 30, 1985, this Office notified Dr. C.M. Switzer, Deputy Minister, Ministry of Agriculture and Food, of our intention to investigate Farm Q's complaint. Dr. Switzer was asked to comment. His response was dated September 11, 1985.

My Office's investigation included interviews with Mr. Q (President), Dr. A (Vice-President) and Dr. H (Vice-President), all of Farm Q; Dr. C.M. Switzer (Deputy Minister) and the Director of the Animal Industry Branch, both of the Ministry of Agriculture and Food; and Dr. E (Geneticist at an Ontario University and Technical Advisor to the Ontario Swine ROP Advisory Committee). There was correspondence with Dr. F (Swine ROP Consultant to the Ministry of Agriculture and Food). The two volumes of material submitted by the Ministry of Agriculture and Food were studied. We consulted Dr. J (Geneticist/Statistician at a Canadian University) on some of the technical aspects of this case. My Office's investigation revealed the following information.

The Swine Record of Performance program (ROP) is a joint Federal/Provincial program that has been in existence in Ontario since 1967. The objective of the program is to assist pig breeders in selecting superior genetic stock. As part of the program, technicians employed by the province visit farms, measure back fat thickness at prescribed points on each animal and record the weight and age of the animal probed. These data, known as home test ROP data, are publicized by the Ministry in several of its publications which it distributes widely among pig producers.

In 1983 Farm Q undertook a \$1.8 million expansion program intending to establish itself in Ontario as a premier supplier of genetically superior swine stock. The selection of suitable pigs with which to stock its Unit No. 6 was of crucial importance to Farm Q's

program. Farm Q carefully reviewed the available data and found that an Ontario herd (herd 1) appeared to be of exceptional merit. According to the Ministry's veterinarians, herd 1 had an excellent health status and its herd of Yorkshires was sufficiently large to supply most of Farm Q's needs. Furthermore, the published ROP statistics on herd 1 were so good that Farm Q believed that they could only have been obtained from genetically superior animals. On October 14, 1983, Farm Q placed an order with Farm 1 for 179 pigs. During the first half of 1984, the pigs were selected, bred and delivered to Farm Q.

In August 1984, Mr. B replaced Mr. C, who was away on vacation, as the ROP technician probing the pigs from Farm Q's Unit No. 6. These pigs had been supplied by Farm 1 and some had been probed previously by Mr. C. The back fat measurements reported by Mr. B averaged 18.1 mm whereas the average quoted by Mr. C was 12.7 mm. The discrepancy is so great that Farm Q cannot use many of these pigs as breeding stock and has lost a considerable sum of money as a result. Farm Q attributes its heavy financial losses to the fact that the published ROP statistics on herd 1 were incorrect. At a meeting with Ministry representatives on October 22, 1984, Farm Q requested the Ministry to compensate it for these losses.

The Ministry itself had discovered the problem associated with Mr. C's back fat probes as early as July 3, 1984 when Mr. B probed the pigs at Farm 1. Subsequent comparative tests conducted by the Ministry between Mr. D and Mr. C confirmed that Mr. C's back fat measurements taken over several years could not be accepted with any reliability. These measurements had been propagated in some of the Ministry's publications. Nevertheless, the Ministry decided that no compensation would be paid to Farm Q.

The Ministry has given two reasons for rejecting Farm Q's claim:

1. Despite the unreliable ROP data, "Farm Q purchased pigs from the best source in Ontario with regards to health, numbers and genetics."
2. "In spite of Ministry warnings that home test results cannot be used to compare genetics between herds, Farm Q misused the information in this way."

The Ministry's position is based on the conclusions of its two consultants, Dr. E and Dr. F. Their arguments will now be discussed.

1. Farm Q chose the right herd despite the unreliable ROP figures

Dr. E set out to establish the relative genetic merit of herd 1 using the available ROP data. He used "the new genetic evaluation system developed by the University of Guelph and approved by the ROP National Advisory Committee for routine application to the ROP program. Data used to estimate genetic merit did include data from those herds subject to probing errors." Dr. E concluded that "... there was probably no better

available source for Yorkshires and they selected more Yorkshires than any other herd. The choice of herd 1 as a source of breeding stock was sound."

Dr. F's approach was to examine the performance records of: (a) Farm 1 boars that had been submitted for testing at central test stations and (b) the performance records of their progeny. Dr. F concluded that "based on these two performance criteria ... it seems clear that this herd merits a reputation for genuine genetic superiority.... it is clear that Farm Q ... could not have improved on their choice of Farm 1's herd as a source for their foundation Yorkshire stock."

I note however that both Dr. E and Dr. F restricted their analyses to Ontario data. But Farm Q could have bought outside of Ontario. In 1979/80, Farm Q did import 26 boars from abroad. In May/June 1983, Farm Q was actively investigating the possibility of buying from two pig development companies in the United Kingdom. Importation of stock would have doubled the cost of livestock to Farm Q, but economically it would have been the soundest decision. In a total investment of \$1.8 million, an additional \$100,000 to ensure top quality animals would have caused Farm Q no hesitation since it realized that the whole enterprise depended on the quality of the animals. Farm Q contends that it bought from Farm 1 on the basis of ROP statistics put out by the Ministry, and ended up with the wrong herd because these statistics were unreliable. It appears to me that the analyses by Dr. E and Dr. F do not contradict Farm Q's contention.

I went further and considered the situation addressed by Dr. E and Dr. F. Even if we make the assumption that herd 1 was the best one available, the unreliable probing results would have tended to nullify the within-herd selection process. Receiving a random sample of pigs could only have an adverse effect on a pig breeding facility. My reasoning is based on the following information.

After finding that the rank correlation between Mr. C's and Mr. D's probes was 0.47, Dr. E concluded that "... probing errors would have resulted in some incorrect ranking of pigs for back fat."

Dr. F had arrived at a different conclusion. He made a plot of Mr. C's results against Mr. D's and determined if the fattest animals were eliminated for selection purposes, that: "at least 75% of the animals saved for breeding would have been common to the two probers.... this suggests a reasonable concordance for the rankings of genetic merit provided by these two probers." However, from an examination of this plot it would appear that there would have been only 19 animals out of a total sample of 43 (i.e. 44%) which would have been common to the two probers. Therefore, it seems to me that Dr. F's statement "... the within-herd genetic ranking of pigs was not meaningfully compromised..." is not supported by the facts he reported.

In view of Dr. E's conclusion that there was "some incorrect ranking of pigs" and our re-interpretation of Dr. F's Fig. 2, I am led to believe that some fat animals would have been mistaken for lean animals and vice versa. Effectively, this would have compromised any attempt to select a sample of superior animals.

2. Home test ROP figures should not be used for comparing herds

According to the Ministry, "the ROP handbook, bi-weekly reports, and several fact sheets all warn against using home test ROP data to compare the genetic quality of different herds."

Farm Q argues that the Ministry is ignoring the reality of the marketplace when it says that the home test ROP data should not be used for between-herd comparisons. Farm Q contends that in practice local, national and international buyers and sellers use these statistics as a basis for making purchases of pigs. In the case of females, the bulk of Farm Q's purchases, the only available data were the home test data. Farm Q also maintains that, in any event, the Ministry implicitly and explicitly promoted in many of its publications the use of ROP home test data for purposes of selection and purchase.

To judge the strength of the Ministry's advice against using the data, it is necessary to take a closer look at the Ministry's "warnings."

The typical Ontario ROP Swine Report - Program A, states that "... the home test information on individual pigs should be used for comparisons with the breeder's herd average and not for comparisons between herds."

For many years, the Ontario ROP Swine Annual Report has carried the following statement: "The following herd averages should NOT be considered as a valid measure of the genetic merit of the pigs tested in each herd."

In the Ontario ROP Swine Breeders Handbook, it is stated on page 6 that "... the home test performance of pigs tested in different herds should not be directly compared." (Emphasis added.)

Farm Q was fully aware of the inherent problem in using home test data for comparing herds, and was also aware of the Ministry's statements concerning the problem.

But, some of the Ministry's statements made over the years in the same publications as the "warnings" convey quite a different message:

In order to obtain gilts that are genetically lean and growthy, performance information should be available for each gilt. Ask the breeder for the home test index as well as the backfat thickness and age at 90 kg. [Selecting replacement gilts - Fact Sheet, January, 1979]

Complete ROP information for all animals which have been ROP tested should be provided in sale catalogues and breeders should include complete ROP information if ROP information is included in advertisements. [Ontario ROP Swine Newsletter - July, 1983]

As the home test index is the best single indicator of a boar's genetic potential, a producer should purchase a boar with as high a home test index as possible.... [Selecting a Herd Boar - Fact Sheet, February, 1979]

Gilts which are selected as herd replacements should have a home tested index above 100. [Ontario ROP Swine Breeders' Handbook]

Statements such as these encourage prospective buyers to use the ROP home test data when purchasing gilts. Since these ROP data were the only "objective" data available for gilts, and since the Ministry promoted their use, the industry came to rely on the published data when purchasing gilts for breeding stock. Thus, the people actually involved in pig breeding tended to disregard the Ministry's cautions that the ROP home test data should not be used for comparing herds.

The following remarks by Dr. F show how the industry treated the Ministry's cautions:

Program managers in Ontario as in other provinces, cannot be faulted for ignoring or minimizing the non-validity of between-herd comparisons based on home test results.

There appears to be wide use of home test results for designating animals for sale/purchase and for establishing price lists.

Small differences in adjusted fat and hence of index are widely perceived as infallible guides to real differences in potential genetic merit.

This perception of infallibility is reinforced by the inclusion of test performance data on pedigree certificates issued by the Canadian National Livestock Records.

In using the home test data to select pigs from herd 1, Farm Q did no more than conform to a practice that was common in the industry. Farm Q has considerable practical experience in breeding pigs and despite the difficulties in using home test data for comparing herds, Farm Q correctly interpreted such data and concluded that herd 1 was a superior herd. (It may be noted that both of the Ministry's consultants consider herd 1 to be a superior herd.) But the incorrect figures published by the Ministry over the years made herd 1 appear to be even better than it actually was. Thus, because the basic data were wrong, Farm Q spent \$1.8 million to end up with pigs comparable with the ones it already had in its Unit No. 3.

Thus, it appeared to me that MAF's first argument that Farm Q purchased pigs from the best source in Ontario may be irrelevant. Farm Q did not need to buy in Ontario and did not need to buy at all. Farm Q decided to risk \$1.8 million because the incorrect ROP data made herd 1 seem even better than it actually was. Furthermore, the incorrect ROP data compromised the selection of pigs within herd 1.

With regard to MAF's cautions about using the ROP data, both the Ministry and industry were caught in a dilemma. It is general knowledge that environmental factors make it difficult to use the home test ROP data for comparing herds, but the only "objective" data available for gilts were the ROP data. Thus, the dilemma facing pig breeders was whether or not to use home test ROP data for comparing herds. According to Dr. F, the decision made by pig breeders in Ontario was quite unequivocal. He noted that "there appears to be wide use of home test results for designating animals for sale/purchase and for establishing price lists."

In using the home test data to select pigs from herd 1, Farm Q was conforming to a practice that was common in the industry. It must be emphasized that Farm Q correctly interpreted the available data. Farm Q's problem came about because the published data were wrong.

Since it appeared to me that there were sufficient grounds to make a recommendation that would adversely affect the Ministry, a letter detailing the results of my investigation and my possible conclusion and recommendation was sent on May 15, 1986 to Dr. C.M. Switzer, Deputy Minister, Ministry of Agriculture and Food. My tentative conclusion and recommendation were as follows:

Possible Conclusion:

The Ministry of Agriculture and Food unreasonably denied Farm Q's claim for compensation for financial losses it suffered as a result of its reliance on unreliable data propagated by the Ministry.

Possible Recommendation:

The Ministry of Agriculture and Food should compensate Farm Q for its losses, with the object of compensation being to bring Farm Q back to the position it would have been in had the statistics published by the Ministry and relied on by Farm Q been correct.

Dr. Switzer responded by letter dated June 27, 1986. The Ministry's decision not to pay Farm Q's claim remained unchanged and, based on seven points, Dr. Switzer was certain that I would agree with his Ministry's position. In discussing the seven points listed by Dr. Switzer, I have taken account of the views expressed by Dr. J. An independent consultant was engaged by our Office because of the highly technical nature of the reports and the comments submitted by Dr. E and

Dr. F. Dr. J's name was suggested to us by Dr. E himself. Dr. K (Head of the Genetics Department at an Ontario University) confirmed that Dr. J was an appropriate choice as an independent consultant and Farm Q also agreed that he was suitable.

The Ministry's seven points are discussed in the order in which they were given.

1. Probing errors had little effect on the selection of pigs within herd 1.

Dr. J stated that "I am forced to conclude that indeed Dr. F's figure (No. 2) does indicate that some fat pigs would be mistaken for lean pigs and vice versa."

Dr. J also stated that "Dr. E's rank correlation of 0.47 between Mr. C's probes and Mr. D's probes indicates that some fat pigs would be mistaken for lean pigs and vice versa."

If fat pigs were mistaken for lean pigs and vice versa it is not true to state that "probing errors had little effect on the selection of pigs within herd 1."

There appears to be a discrepancy in Dr. E's two statements that;

- (a) Probing errors would have resulted in some incorrect ranking of pigs for backfat.
- (b) Probing errors had little effect on the selection of pigs within herd 1.

Dr. E made his second statement after analyzing selection differentials in herd 1. However, in his analysis, Dr. E used the incorrect data reported by Mr. C over several years. Dr. E corrected for Mr. C's errors on the assumption that the major component of Mr. C's error was a systematic error.

However, Dr. J noted that "given the low rank correlation and the lack of concordance between the estimates of backfat, I should be very reluctant to accept analyses using Mr. C's figures.... the low rank correlation, indicating considerable discordance between [Mr. D] and [Mr. C], is in my opinion the most serious problem which cannot be adequately accommodated by these statistical models."

Since Dr. E's statistical model cannot adequately accommodate Mr. C's incorrect data, I am unable to accept his conclusion that probing errors had little effect on the selection of pigs within herd 1. My opinion is that when Farm 1 thought that it was selecting superior animals for sale to Farm Q, in reality it selected an unknown mixture of superior and inferior animals.

2. Farm Q selected herd 1 on the basis of average herd performance and it is recognized by geneticists that herd average performance can be a very misleading indicator of genetic level.

In accordance with suggestions made by MAF in several of its publications, Farm Q used the home test ROP data for selecting the gilts it intended to purchase. Farm Q did not interpret the data wrongly. It bought the wrong pigs because the basic data were incorrect. There was nothing that Farm Q could have done to neutralize the effect of wrong data.

In any event, Farm Q had no hint that the published Swine ROP data were incorrect. MAF has never warned that the data could be inaccurate. On the contrary, the published measurements of backfat thickness are given to the nearest tenth of a millimetre, creating the impression that the probes are accurate to that level of magnitude.

3. At the time the decision was made, selection of herd 1 as a supplier of breeding stock was a sound choice, given the constraints on health status and the number of pigs of different breeds.

As previously pointed out, Farm Q did not have to buy in Ontario and did not have to buy any pigs at all. As seen in point number 7 (below), the pigs of Farm Q's Unit No. 6 are no better than the pigs Farm Q already had in its Unit No. 3. Farm Q decided to establish its Unit 6 because the published data were flattering to the Farm 1 pigs, leading Farm Q to believe that it would be able to produce premium quality pigs from Farm 1 stock. The issue is not whether herd 1 was a good one, but whether herd 1 was as good as the Swine ROP data made it out to be. MAF admits that the ROP data were wrong, the data misrepresented herd 1 and the misrepresentation made the herd look better than it was.

4. Herd 1 has since deteriorated genetically, but that deterioration can be traced to heavy use of imported boars.

The condition of herd 1 since Farm Q's purchases does not alter the fact that Farm Q's decision to purchase was influenced by the incorrect data published by MAF.

5. Sources of breeding stock in the United Kingdom would likely have been no better and more likely worse.

Farm Q was not obliged to buy from the United Kingdom if Ontario were unable to supply suitable stock. Farm Q could have bought from the U.S.A., Scandinavia or any other country. Furthermore, if Farm Q had been unable to locate exceptional pigs anywhere, it would not have bought any pigs at all.

6. The pigs of Unit 6 are genetically comparable to pigs of Farm Q's Unit 3 and population of Unit 6 with pigs from Unit 3 would not have improved matters but would have been more expensive if high health status was required.

It was not Farm Q's intention to spend \$1.8 million in order to produce pigs of a quality it was already producing in its Unit No. 3. Farm Q's complaint is that after spending this amount it was producing pigs no better than it had before.

7. The excessive fatness of pigs in Unit 6 experienced by Farm Q is not primarily a genetic problem but is a management problem commonly found with newly established minimal disease herds, and it is working itself out over time.

As noted by Dr. J, "this may or may not be true, but even if it is true and will quickly vanish this still would not eliminate the errors and problems caused by the errors in probing backfat depths."

After carefully considering the representations made by Dr. Switzer under section 19(3) of the Ombudsman Act, I am of the opinion that MAF has presented no valid reason for denying the Farm Q claims. Therefore, my final conclusion and final recommendation are as follows:

Final Conclusion:

The Ministry of Agriculture and Food unreasonably denied Farm Q's claim for compensation for financial losses suffered as a result of its reliance on unreliable data propagated by the Ministry.

Final Recommendation:

The Ministry of Agriculture and Food should compensate Farm Q for losses it suffered as a result of its purchase of breeding stock from Farm 1 in 1983/1984. Farm Q estimates these losses to be \$417,500 (see Appendix 1).

This report was sent to the Minister and the Deputy Minister of Agriculture and Food on November 7, 1986. There were meetings and exchanges of correspondence between my Office and the Ministry. In a letter dated December 4, 1988, the Deputy Minister informed me that his Ministry's position was unchanged. I therefore sent a copy of the report to the Premier on January 5, 1989. Mr. Q was notified of the results of my investigation on January 5, 1989.

APPENDIX 1

BREEDING LOSSES SUFFERED BY Farm Q

| <u>Grade</u> | <u>Actual Sales</u> | | <u>Expected Sales¹</u> | |
|------------------|---------------------|---------------------------|-----------------------------------|---------------------------|
| | <u>Number</u> | <u>Value in \$1,000's</u> | <u>Number</u> | <u>Value in \$1,000's</u> |
| For slaughter | 3,157 | 402 | 3,638 | 463 |
| For breeding | | | | |
| Boars | 176 | 98 | 766 | 426 |
| Crossbreed gilts | 4 | 1 | 451 | 101 |
| Purebred | 398 | 108 | 916 | 248 |
| Weaners | <u>712</u> | <u>28</u> | <u> </u> | <u> </u> |
| | <u>4,447</u> | <u>637</u> ² | <u>5,771</u> | <u>1,238</u> ² |

Notes:

1. (a) Expected sales numbers are based on the assumption that if Farm Q had received pigs of the quality indicated by the ROP figures, each sow would yield 18 piglets per year, and 33% would be unsuitable for breeding.
- (b) Expected sales value = expected sales numbers x actual sale price per unit.
2. The difference between the two tables is \$601,000. From this has been subtracted the variable costs (feed, market commissions, veterinary services, vaccines, extra staff, etc.) totalling \$183,500. This gives a net claim of \$417,500.

